

AGRICULTURE

DIVISION OF PLANT INDUSTRY

Gypsy Moth

Proposed Readoption with Amendments: N.J.A.C. 2:23

Authorized By: Charles M. Kuperus, Secretary, Department of Agriculture

Authority: N.J.S.A. 4:7-36 through 4:7-40

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2003 – 60

Submit comments by April 4, 2003 to:

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The agency proposal follows:

Summary

The rules in N.J.A.C. 2:23 list the requirements for municipal participation in the voluntary gypsy moth suppression program administered by the New Jersey Department of Agriculture. The Department of Agriculture proposes to readopt N.J.A.C. 2:23, which expires on September 22, 2003 pursuant to N.J.S.A. 52:14B-5.1c, with amendments to N.J.A.C. 2:23-1.3(a)5 relating to the operational times of spray activities during the

gypsy moth suppression program. In addition, the Department proposes to add N.J.A.C. 2:23-1.3 (a)7 and amend N.J.A.C. 2:23-1.5(a)1 to require participating municipalities to make additional notification to adjoining school districts and municipalities outlining the activities of the intended gypsy moth spray program and post additional newspaper notifications as required by New Jersey Department of Environmental Protection pesticide rules.

The gypsy moth, *Lymantria dispar*, is a serious pest of oak forested areas of New Jersey. Successive defoliation of susceptible trees by gypsy moth larvae can cause tree mortality, which reduces property values. Property owners also bear the costs of removal dead or dying trees to prevent hazards posed by falling tree limbs. The Department of Agriculture promotes a gypsy moth pest management philosophy, which utilizes the least toxic spray materials, and provides successful control of the gypsy moth outbreak. Annual fluctuations of this forest insect constantly affect the number of participating municipalities, along with the size and duration of the program.

In addition, the Department of Agriculture will seek Federal cost-share assistance from the USDA Forest Service for local governments who participate in the Voluntary Gypsy Moth Suppression Program; non-participating local governments would not be eligible for this Federal assistance.

Because the Division has provided a 60-day comment period, this notice of proposal is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3¹(a) 5.

Social Impact

The social impact of the rules proposed for readoption with amendments will affect property owners and inhabitants in affected communities, along with municipal and county entities planning to conduct gypsy moth aerial suppression programs. Repeated defoliation of high value hardwood trees during the spring by gypsy moth caterpillars often causes tree mortality, which reduces property values, and results in property owners to pay for the removal of dead tree hazards. In addition, the feeding caterpillars constitute a public nuisance known to cause skin irritations to sensitive individuals residing in infested areas. Since the gypsy moth defoliation problem remains a serious threat to these groups, the Department believes, the rules should be continued with amendments.

Economic Impact

The rules proposed for readoption affect only those local governments, which voluntarily choose to participate in the program. Those local governments which do not wish to adhere to the requirements specified in these rules do not have to participate and, hence, will not be economically impacted by the rules.

Each participating municipality, in collaboration with their school districts, are required to pick a one-hour period of time when daily spray operations are stopped to allow for the commutation of school children. In addition, the current rules require spray operations to be halted at noon. The proposed amendment eliminates the noon shutdown. An increase in the allowable time of operation would provide additional hours to conduct treatments depending on the environmental conditions and improve the timing of the treatment along with shortening the length of time it would take to complete the spray program.

Participating municipalities and counties will be required to publish advertisement of intent to adopt a gypsy moth resolution and to properly notify all residents in the proposed spray area(s) along with adjacent municipal governments and school districts as to the intent of the spray program by legal advertisement, display ad and first class mailing. These advertisements, mailings and any necessary tax roll searches will have an economic impact on the municipalities.

In addition to these notification requirements, each participating municipality is required to provide the necessary work force to set up markers in the treatment area and to pay the aerial vendor for the aerial treatment. The economic impact of these requirements, however, are minor compared to the overall economic damage that can be expected from repeated gypsy moth defoliation. The Department of Agriculture will seek Federal cost-share assistance from the USDA Forest Service for local governments who participate in the Voluntary Gypsy Moth Suppression Program to help defray some of the treatment costs; non-participating local governments would not be eligible for this Federal assistance.

Failure to prevent successive defoliation of susceptible trees by gypsy moth larvae can cause tree mortality, which reduces property values. Property owners also bear the costs of removal dead or dying trees to prevent hazards posed by falling tree limbs.

Federal Standards Statement

The rulemaking authority of the Department of Agriculture regarding the gypsy moth is defined at N.J.S.A. 4:7-36 et seq. The federal Cooperative Forestry Assistance Act of 1978 (16 U.S.C. §§ 2101 et seq.), as amended by the Forest Stewardship Act of 1990 (P.L. 101-264), authorizes the USDA Forest Service to enter into cooperative projects

with State authorities to manage forest insects and diseases. In order for the New Jersey Department of Agriculture and local governments to qualify for Federal cost-sharing funds for cooperative gypsy moth suppression projects, the participants must meet the standards and procedures specified in the Cooperative Forestry Assistance Act. The rules proposed for readoption and amendments meet these Federal requirements.

Jobs Impact

The rules proposed for readoption and amendments are not expected to result in the generation or loss of jobs in the state.

Agriculture Industry Impact

The rules proposed for readoption and amendments are not expected to result in any impact to New Jersey's agricultural industry.

Regulatory Flexibility Statement

The rules proposed for readoption and amendments impose no reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq. N.J.A.C. 2:23 lists the requirements for participation by municipal or county governing bodies in the voluntary gypsy moth suppression program.

The rules proposed for readoption with amendments impose certain legal, fiscal and labor requirements on all applicants requesting participation in the Voluntary Suppression Program. These requirements are necessary to ensure that the public has been properly notified, the cost of treatment has been budgeted, the labor needed to delineate the spray

block boundaries has been provided by the applicant, and the spray vendor is paid prior to the disbursement of USDA Forest Service cost-sharing funds.

Smart Growth Impact

The Department believes that the rules proposed for readoption with amendments would have a positive impact on the achievement of smart growth, as they will reduce the damage caused by successive defoliation by the gypsy moth larvae to susceptible trees, which can cause tree mortality in forested residential areas. Forested residential areas are part of the working landscape in New Jersey, critical to the absorption of air pollutants, oxygen production, natural cooling, noise prevention, wildlife habitat and quality of life. The rules proposed for readoption with amendments will have no impact on the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:23.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:23-1.3 Local government participation

(a) Spraying will only be done on a voluntary basis with local governments that agree to fully accept the following conditions for participation in their aerial spray program:

1. - 4. (No change)
5. Notify to the occupants by a properly served notification of the intent of the spray program. Spraying will only be done between the hours of 5:30 A.M. to [12:00 Noon] **2:00 P.M.**, and 5:00 P.M. to 8:00 P.M. [Notwithstanding any provisions of this subchapter, no community or area-wide pesticide application

for gypsy moth control may take place during normal student commuting times.]Each school district, within a participating municipality, shall agree upon and designate a normal student commuting time, not to exceed one hour, during which no spraying will be performed [within two miles of a school housing grades kindergarten through eighth grades or within 2 ½ miles of schools housing grades nine through 12.]. In the event that the proposed spray area(s) encompass more than one school district in the municipality, the municipal governing body shall designate the one-hour spray shut down time, with the approval of the affected school districts. Failure of the affected school districts to approve the designated shut down time shall result in the ineligibility of the municipality to participate in the aerial spray program.

6. (No change)

7. Notify all affected school districts and bordering municipalities by first class mailing at least 21 days prior to the proposed date of treatment outlining the proposed treatment date, material to be used, along with the name and phone number of a local municipal contact person to answer further questions concerning the spray operations.

Recodify existing 7.-9 as **8.-10.** (No change in text)

2:23-1.5 Notification requirements

(a) Pursuant to N.J.S.A. 4:7-39, proper notification of all occupants who reside on the lands selected for treatment is required by doing the following:

1. [Two separate insertions in a newspaper qualified to accept legal notices published in the county of the proposed treatment or other action and circulating in the affected areas.] **Two newspaper notices are required to be placed in two**

newspapers having the best likelihood of informing the public. One notice is to be posted in the legal section and the other posted as a display ad. [The two insertions] **Both notifications** shall appear at least seven days apart, the first of which shall be [not] **no** earlier than 21 days prior to the proposed date of treatment or other action, and the second of which shall, be [not] **no** later than seven days prior to the proposed date thereof; [and]

2. Mailing a notice by regular first class mail to the occupant of each affected parcel of property not later than 10 days prior to the proposed date of treatment or other action[.]; and

3. Mailing a notice by first class mail to all bordering school districts and municipalities no later than 21 days prior to the proposed date of treatment or other action. This mailing shall include the proposed treatment date, the material to be used and the name and phone number of a local municipal contact person to answer questions concerning the spray operation.

Charles M. Kuperus, Secretary

Date